IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2698 OF 2006

Shri R.K. Goel ...Petitioner

V/s.

State of Maharashtra & Anr. ...Respondents

Mr.Ganesh Gole for Petitioner.
Mr.Y.S. Shinde APP for State.
Mr.Neel Helekar for Respondent No.2.

CORAM : V.M. KANADE, J.

DATED : 23rd AUGUST, 2007.

P.C:-

1. Heard learned counsel for the Petitioner and learned counsel for the Respondent No.2.

2. Petitioner is the original accused in the complaint filed by the Respondent No.2 herein before JMFC, Ichalkaranji U/s.138 of N.I. Act. After process was issued, the Petitioner challenged the said order by filing a revision application in the Sessions Court. The Sessions Court dismissed the said application. Hence, the Petitioner has filed this Writ Petition under Article 227 of Constitution of India.

3. Mr.Gole learned counsel for the Petitioner submitted that firstly

complaint itself was not maintainable since cheque in question was not deposited by the complainant within six months from the date of issuance of cheque and therefore, no offence was committed U/s.138 of N.I. Act. He submitted that a cheque was issued on 13/10/2004 to the Complainant and it was deposited by the Complainant on 13/04/2005 and therefore, period of six months has expired on 12/04/2005. He also invited my attention of the bank memo which is annexed to the Writ Petition which clearly shows that it was issued on 13/04/2005. He submitted that on this ground complaint was liable to be dismissed. In support of his submissions, he relied on the judgment of Gujarat High Court in the case of **Arunbhai Nilkanthrai Nanavati V/s. Jayaben Prahladbhai reported in JDC 1177.** He further submitted that the complaint was also filed beyond the period of limitation and no application was filed for condonation of delay. He further submitted that the issuance of process was liable to be set aside. It was duty of the Magistrate to examine whether the complaint was filed within limitation or not. He submitted the complaint was filed on 05/07/2005 and the limitation had expired before that date.

4. Learned counsel for the Respondent No.2, on the other hand, submitted that the cheque in question was deposited in bank on 11/04/2005

not on 13/04/2005 as submitted by the learned counsel for the Petitioner. He submitted that, therefore, the cheque was deposited within time. He also invited my attention to the bank memo and submitted that there was a specific clause in respect of cheques which are out of date. He submitted that cheque was not dishonoured on that account but was dishnoured on account of funds being insufficient. He submitted that first submission made by the leaned counsel for the Petitioner was not correct. So far as second submission is concerned, he invited my attention to para 10 of the order passed by the Sessions Court wherein, Sessions court after taking into consideration relevant dates has held that the complaint was also within limitation.

5. After having examined the complaint and relevant dates, in my view, submission made by the Petitioner cannot be accepted at this stage. So far as first issue is concerned, without going into merits at this stage, it will be open for the Petitioner to agitate this issue after evidence is raised by both the parties and the Trail Court shall consider this contention at the final hearing of the case. The Trial Court shall not be influenced by the observations, if any, made by the Sessions Court and decide it on merits after taking into consideration evidence on record. So far as second

submission made by the learned counsel for the Petitioner regarding point of limitation is concerned, in my view, at the most even if submission made by the learned counsel for the Petitioner is accepted that there was a delay of one day or at the highest few days, Sessions Court has come to the conclusion that no delay is caused and complaint is filed within limitation. After amendment of Section 142 of N.I. Act, the Trial Court has power of condoning the delay caused, if any, in filing the complaint. Since, the Sessions Court after having examined issue, has observed that the complaint is filed within limitation, in my view, submissions made by the learned counsel for the Petitioner cannot be accepted. Even if it is admitted that delay of few days is accepted, delay is liable to be condoned even otherwise. Considering the facts that the complainant has pursued the complaint with due diligence, hence, there is no merit in the submissions made by the Petitioner. Petition is dismissed accordingly.

6. The Trial Court is directed to decide the complaint as expeditiously as possible and if any application is made for exemption, the Trial Court shall not insist on the presence of the Petitioner on each and every date. Petition is disposed of in above terms. Parties to act on authenticated copy duly signed by the concerned Associate of the Court.

V.M. KANADE, J.